

ICPS newsletter[®]

Protection for ethnic minorities may soon be closer to EU standards

The drafting of the Bill "On protection against discrimination" continues, offering protection to ethnic minorities in the main areas of life, establishing penalties for violating the principle of equality, providing victims with easier access to the courts to defend their rights, and authorizing a special body to implement anti-discrimination policy. If the Verkhovna Rada passes this Bill, Ukraine will be even closer to EU standards and its guarantees for conflict-free democratic development will improve

On 4 October 2005, the International Centre for Policy Studies hosted a debate on the concept of a Bill "On protecting against discrimination." This is the second debate under a project entitled "Defending the Rights of Roma in Ukraine and Ensuring Access to Justice." Within this project, specialists from ICPS and top Ukrainian human rights organizations are studying the issue of counteracting discrimination and preparing the necessary bill jointly with members of the Verkhovna Rada Committee for Human Rights, Ethnic Minorities and Interethnic Relations. This research project is an example of open lobbying for changes to government policy. This is precisely the approach used in developed democracies to lobby specific issues.

During the first debate 7 July 2005 involving top Ukrainian specialists, participants provided evidence that discrimination does exist in Ukraine and identified key reasons why Ukrainian legislation is unable to handle this problem [see *ICPS newsletter* #27 (286) of 25 July 2005]. The conclusions of that debate made it possible to prepare a list of changes needed to remedy the situation, to draft a document called "The Concept (Key Provisions) of the Bill 'On protecting against discrimination'" and to present it for debate.

Equality will be guaranteed for ethnic minorities

The Bill is intended to combat racial, national and ethnic discrimination. The instruments and mechanisms written into the Bill should protect against discrimination in all areas of labor relations, healthcare, education, social security and social services, housing, justice, voter activism, and access to goods and services. The list was matched to the European Union's Race Directive 2000/43/EC.

To make the provisions of anti-discrimination legislation effective, the Bill "On protecting against discrimination" will contain a number of enforcement mechanisms:

- administrative sanctions for minor offences committed by private individuals;
- financial penalties for offences committed by business entities;
- criminal responsibility for offences categorized as felonies;
- compensation for damages to victims of discrimination.

Simple offenses include the most common discriminatory actions, such as refusing to sell goods, lease premises, or provide services under generally accepted conditions; restricting access to cultural, educational, medical, dining, and entertainment facilities, transport services, and government services. Liability will include instigating discrimination, failing to carry out decisions of the anti-discrimination agency, and victimization in the form of persecution for an individual's attempts to defend their right to equality.

The Bill expects responsibility for implementing anti-discrimination policy to go to a specific government body. Those running the study say this should be the Ministry of Justice, which will have to set up a separate department for combating discrimination. Its main functions should be:

- supervising enforcement of anti-discrimination legislation;
- taking in discrimination-related complaints and checking them out;
- providing legal aid to victims of discrimination.

This body will be authorized to:

- impose sanctions;
- adopt decisions related to discriminatory actions that must be carried out;
- collect evidence and information about offences;
- turn to the courts on behalf of victims of discrimination.

Access to justice should become easier

The adoption of such a Bill should lead to a decline in ethnic discrimination by easing access to justice. The current draft includes an out-of-court procedure for victims of discrimination, the promotion of non-state assistance to victims of discrimination, and the improvement of civil procedural legislation to make it easier to prove discrimination.

It also identifies instruments for strengthening state support for victims of discrimination. This includes, for example, giving human rights organizations the right to represent victims of discrimination before the courts and executive agencies and allowing the delegation of some functions of the anti-discrimination body, such as consultations and assistance in formulating and submitting complaints and legal cases, to human rights organizations.

Changes to the Civil Procedural Code will make it possible for courts to transfer the burden of proof that the principle of equality was not violated to the defendant. The Bill also allows for a wider range of information as evidence of discrimination, including statistical data and the results of applying special methods for revealing discrimination. ■

The complete text of the concept of the Bill, other materials of the debate and more detail on the "Defending the Rights of Roma in Ukraine and Ensuring Access to Justice" project can be found online at: <http://www.icps.kiev.ua/eng/project.html?pid=76>. For additional information, contact Oleksandr Tatarevskiy by telephone at (380-44) 484-4400 or via e-mail at atatarevsky@icps.kiev.ua.

Why is the hryvnia so jumpy?

During the last few months, the exchange rate for cash US dollars has significantly fluctuated compared to the official exchange rate, which has stayed at UAH 5.05/USD. In late August, the buy rate for US dollars fell below UAH 5.00, whereas in early October, it not only recovered, but even grew to the level observed right after the April appreciation. At the moment, the exchange rate for cash dollars is going down again

Officially, the National Bank of Ukraine does not have to keep the UAH/USD exchange rate, or any other exchange rate for that matter, stable. According to Art. 6 of the Law "On the National Bank of Ukraine" and Art. 99 of the Constitution of Ukraine, the main function of the NBU is to ensure "the stability of the national currency."

Determining a "stable exchange rate" is fairly complicated, especially for an economy as exposed as Ukraine's. Growing prices on global markets for Ukrainian exports significantly raise the value of exports while leaving physical volumes practically unchanged. Growing world prices for critical imports such as oil and gas have the opposite impact on the trade balance. If the nominal UAH/USD exchange rate continues to be stable, the country will see domestic prices go up, that is, the NBU will fail in a key function—ensuring stable domestic prices.

The end of a stable UAH/USD rate?

Even if the theoretical issue of how possible it is to actually maintain both internal (overall prices level) and external (real effective exchange rate) stability at the same time is set aside, the stability of the external exchange rate has to be evaluated not against one currency, but against a basket of currencies. Each currency in this basket must be represented in proportion to its share in the country's exports or foreign trade turnover. For Ukraine, this basket should contain 25% EUR and 75% USD.

Thus, if the euro fluctuates against the dollar, the UAH/USD rate and the UAH/EUR rate must change in tandem to keep the overall value of this basket of currencies unchanged. Currently, the UAH/EUR exchange rate is a cross rate, that is, the NBU sets this exchange rate on the basis of the UAH/USD rate that it has established and the USD/EUR rate established on international forex markets. This is the reason behind the noticeable fluctuations in the euro exchange rate in Ukraine—they echo changes in the USD/EUR rate.

Currently, the NBU is continuing to debate the merits of gradually switching from a *de facto* fixed nominal US dollar exchange rate to a hryvnia exchange rate that is pegged to a basket of currencies. Not many countries officially peg their currencies in this way. This is because tightly pegging to a single currency, whether officially or unofficially, has a major psychological impact: the country's residents see a stable exchange rate as a sign that their economy is stable and that there is no inflation.

In Ukraine, however, given the relatively stable nominal USD exchange rate, the real dollar exchange rate, that is, reflecting inflation, grew 12.8% during 2004 and 11.9% over 2005. Pegging the hryvnia not simply to the US dollar but to a USD–EUR basket will stimulate the development of trade between Ukraine and the EU as the exchange rate begins to fluctuate less.

If the NBU actually switches to pegging the hryvnia to a basket of currencies, Ukraine can expect less stability in the dollar exchange rate and more stability in the euro exchange rate. This will indirectly affect the share of personal deposits in foreign currency and reduce the buy-sell exchange rate corridor for the euro.

Clearly, the switch to a basket of currencies will most likely be very gradual. In other words, there is no reason to expect the US dollar exchange rate to suddenly become volatile. Moreover, if the NBU sees that the situation is deteriorating on the interbank or cash exchange markets as it switches to a basket of currencies, it can easily return to the previous exchange mechanism. According to unofficial sources, the Bank will switch to a basket of currencies over the next 12 months. At that point, it will be possible to say that the era of a stable official US dollar exchange rate is coming to an end.

The factors affecting the cash exchange rate are transient

The official USD exchange rate should continue to be stable at least until the

Verkhovna Rada elections. Still, the cash exchange rate will most likely continue to be jumpy. In early October, the US dollar went up again, to UAH 5.15/USD in Kyiv and even higher in some regions. The current leap is partly the result of temporary factors: at the beginning of the month, many people have to make payments in dollars, such as rent for apartments. Meanwhile, a scheduled wage rise in September raised personal incomes for Ukrainians, many of whom decided to buy foreign currency for a rainy day.

Since these factors are transitory, the exchange rate should return to its previous level. However, given that fall and winter in 2005 will be politically heated and that Ukrainians trust the American currency more than their own, other short-term upward spikes in the exchange rate are very likely.

Any temporary surplus or deficit on the foreign currency market is likely to increase the instability of the Ukrainian currency. In the short term, the exchange rate is much more affected by foreign currency flows in or out of the country than by macro indicators, such as economic growth or inflation. If, for example, a country's exports, imports and international money transfers are balanced, the overall demand for foreign currency will tend to match the supply. But if, say, foreign investment grows, this balance is disturbed. Thus, one of the factors behind the growing supply of foreign currency on the interbank market was the release of several large loans to Ukrainian enterprises in August. When the exchange rate is controlled, such imbalances do not affect the official rate set by the NBU, but the cash market tends to react to them.

In any case, it is practically impossible for the average Ukrainian to make money on shifts in the exchange rate, so it makes little sense to buy and sell foreign currency after each change in the price. It is much more profitable to deposit spare money at a bank. The NBU will continue to support an official exchange rate of UAH 5.05/USD at least until the Verkhovna Rada elections in March 2006 in order to avoid making the public nervous once again. This is stability people can count on. ■

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